

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT CLARKSBURG**

**BIOGEN INTERNATIONAL GMBH and
BIOGEN MA INC.,**

Plaintiffs,

v.

MYLAN PHARMACEUTICALS INC.,

Defendant.

Civil Action No. 1:17-cv-116-IMK

MYLAN PHARMACEUTICALS INC.'S MOTION FOR FINAL JUDGMENT

WHEREAS Plaintiffs Biogen International GmbH and Biogen MA Inc. filed this lawsuit alleging infringement of U.S. Patent Nos. 6,509,376 (“the ’376 patent”); 7,320,999 (“the ’999 patent”); 7,803,840 (“the ’840 patent”); 8,759,393 (“the ’393 patent”); 7,619,001 (“the ’001 patent”); and 8,399,514 (“the ’514 patent”) (ECF No. 1);

WHEREAS on February 5, 2019, the parties stipulated to dismissal of all claims, counterclaims, and defenses related the ’376, ’999, ’840, and ’393 patents (ECF No. 196);

WHEREAS in advance of trial the parties stipulated to stay all remaining claims, counterclaims, and defenses regarding the ’001 patent until June 20, 2020;

WHEREAS the ’001 patent expires on June 20, 2020 (*see* Ex. A);

WHEREAS trial was held on February 4, 6, 7, and 10, 2020 regarding the invalidity of the asserted claims of the ’514 patent;

WHEREAS on June 18, 2020, the Court issued its decision finding the asserted claims of the ’514 patent invalid for lack of written description under 35 U.S.C. § 112 (ECF No. 400);

WHEREAS the Court stated, “because the parties’ remaining claims, counterclaims, and defenses regarding the ’001 patent are stayed until June 20, 2020 . . . the Court’s decision . . . does not deny all requested relief” and that “absent a request from the parties, the Court declines to enter a separate judgment order pursuant to Federal Rule of Civil Procedure 58” (ECF No. 400 at n.21);

WHEREAS under Federal Rule of Civil Procedure 54(b) “the Court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties if the Court expressly determines there is not just reason for delay.” Fed. R. Civ. P. 54(b); and

WHEREAS there is no just reason to delay an entry of final judgment as to the invalidity of the ’514 patent following the Court’s Memorandum Opinion and Order.

THEREFORE, Defendant Mylan Pharmaceuticals Inc. (“Mylan”) respectfully requests, pursuant to Rule 54(b), that the Court enter final judgment in favor of Mylan as to Mylan’s counterclaims of invalidity on the asserted claims (claims 1-4, 6, 8-13, and 15-16) of the ’514 patent for lack of written description under 35 U.S.C. § 112 based on the Court’s June 18, 2020 Memorandum Opinion and Order (ECF No. 400).

Dated: June 18, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of June 2020, I filed the foregoing “Mylan Pharmaceuticals Inc.’s Motion for Final Judgment” with the Clerk of the Court using the CM/ECF system of the Court which will cause notice thereof to be served on the following counsel of record via email:

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